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Supreme Court, U.S.
FILED

DEC. 12 1983

ALEXANDER L. STEVAS
CLERK

NO. A-241

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

JOHN DOUGLAS,
Petitioner

v.

**RICHARD S. SCHWEIKER, SECRETARY
OF HEALTH AND HUMAN SERVICES,**
Respondent

**ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT**

PETITION FOR A WRIT OF CERTIORARI

COUNSEL FOR THE PETITIONER

**Richard N. Weintraub
POB 1188
Durham, NC 27702
(919) 683-1480**

QUESTION PRESENTED

I. WHETHER THIS COURT SHOULD EXERCISE ITS POWER OF SUPERVISION OVER THE INFERIOR FEDERAL COURTS BY INSTRUCTING THEM THAT SUBSTANTIAL RECORD REVIEW OF ADMINISTRATIVE ACTION REQUIRES CONSIDERATION OF EVIDENCE CONTRARY TO THE ADMINISTRATIVE DECISION AND WHETHER THE COURT BELOW VIOLATED THAT RULE?

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REFERENCE TO REPORTS OF OPINIONS

The opinions of the courts and administrative agencies are set forth in the Appendix; none has been published.

GROUND ON WHICH JURISDICTION IS INVOKED

The judgment sought to be reviewed was entered on July 14, 1983. By order dated October 5, 1983, this court extended the time for filing a petition for writ of certiorari to include December 11, 1983. It is believed that this court has jurisdiction to review the judgment in question pursuant to 28 U.S.C. 1254(1).

STATUTES WHICH THE CASE INVOLVES

(g) Judicial review. Any individual, after any final decision of the Secretary made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of

such decision or within such further time as the Secretary may allow. Such action shall be brought in the district court of the United States for the judicial district in which the plaintiff resides, or has his principal place of business, or, if he does not reside or have his principal place of business within any such judicial district, in the United States District Court for the District of Columbia. As part of his answer the Secretary shall file a certified copy of the transcript of the record including the evidence upon which the findings and decision complained of are based. The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming,

modifying, or reversing the decision of the Secretary, with or without remanding the cause for a rehearing. The findings of the Secretary as to any fact, if supported by substantial evidence, shall be conclusive, and where a claim has been denied by the Secretary or a decision is rendered under subsection (b) hereof which is adverse to an individual who was a party to the hearing before the Secretary, because of failure of the claimant or such individual to submit proof in conformity with any regulation prescribed under subsection (a) hereof, the court shall review only the question of conformity with such regulations and the validity of such regulations. The court may, on motion of the

Secretary made for good cause shown before he files his answer, remand the case to the Secretary for further action by the Secretary, and it may at any time order additional evidence to be taken before the Secretary, but only upon a showing that there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding; and the Secretary shall, after the case is remanded, and after hearing such additional evidence if so ordered, modify or affirm his findings of fact or his decision, or both, and shall file with the court any such additional and modified findings of fact and decision, and a transcript of the additional record and

testimony upon which his action in modifying or affirming was based. Such additional or modified findings of fact and decision shall be reviewable only to the extent provided for review of the original findings of fact and decision. The judgment of the court shall be final except that it shall be subject to review in the same manner as a judgment in other civil actions. Any action instituted in accordance with this subsection shall survive notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.

42 U.S.C. § 405(g).

§ 423. Disability insurance benefit payments

(a) Disability insurance benefits.

(1) Every individual who--

(A) is insured for disability insurance benefits (as determined under subsection (c)(1)),

(B) has not attained the age of sixty-five,

(C) has filed application for disability insurance benefits, and

(D) is under a disability (as defined in subsection (d)),

shall be entitled to a disability insurance benefit (1) for each month beginning with the first month after his waiting period (as defined in subsection (c)(2)) in which he becomes so entitled to such insurance

benefits, or (ii) for each month beginning with the first month during all of which he is under a disability and in which he becomes so entitled to such insurance benefits, but only if he was entitled to disability insurance benefits which terminated, or had a period of disability (as defined in section 216(i)) which ceased, within the 60-month period preceding the first month in which he is under such disability, and ending with the month preceding whichever of the following months is the earliest: the month in which he dies, the month in which he attains age 65, or, subject to subsection (e), the termination month. For purposes of the preceding sentence, the termination month for any individual

shall be the third month following the month in which his disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 222(c)(4)(A), the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after

the 15 months following such period of trial work in which he engages or is determined able to engage in substantial gainful activity. No payment under this paragraph may be made to an individual who would not meet the definition of disability in subsection (d) except for paragraph (1)(B) thereof for any month in which he engages in substantial gainful activity, and no payment may be made for such month under subsection (b), (c), or (d) of section 202 to any person on the basis of the wages and self-employment income of such individual. In the case of a deceased individual, the requirement of subparagraph (C) may be satisfied by an application for benefits filed with respect to such individual

within 3 months after the month in which he died.

(2) Except as provided in section 202(q) and section 215(b)(2)(A)(ii) such individual's disability insurance benefit for any month shall be equal to his primary insurance amount for such month determined under section 215 as though he had attained age 62 in--

(A) the first month of his waiting period, or

(B) in any case in which clause (ii) of paragraph (1) of this subsection is applicable, the first month for which he becomes entitled to such disability insurance benefits,

and as though he had become entitled to old-age insurance benefits in the month in which the application for disability insurance benefits was filed and he was entitled to an old-age insurance benefit for each month for which (pursuant to subsection (b)) he was entitled to a disability insurance benefit. For the purposes of the preceding sentence, in the case of an individual who attained age 62 in or before the first month referred to in subparagraph (A) or (B) of such sentence, as the case may be, the elapsed years referred to in section 215(b)(3) shall not include the year in which he attained age 62, or any year thereafter.

(d) Definition of disability.

- (1) The term "disability" means--
 - (A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; or
 - (B) in the case of an individual who has attained the age of 55 and is blind

* * *.
- (2) For purposes of paragraph (1)(A)--
 - (A) an individual (except a widow, surviving divorced

wife, or widower for purposes of section 202(e) or (f)) shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied

for work. For purposes of the preceding sentence (with respect to any individual), "work which exists in the national economy" means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.

(B) A widow, surviving divorced wife, or widower shall not be determined to be under a disability (for purposes of section 202(e) or (f)) unless his or her physical or mental impairment or impairments are of a level of severity which under regulations prescribed by the

Secretary is deemed to be sufficient to preclude an individual from engaging in any gainful activity.

(3) For purposes of this subsection, a "physical or mental impairment" is an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.

42 U.S.C. § 423(d)(1)-(3).

STATEMENT OF THE CASE

PROCEDURAL HISTORY

The petitioner filed an application for Social Security disability insurance benefits on August 6, 1976, alleging disability beginning on March 12, 1976. The claim was denied throughout the administrative process, the last step of which was a denial by an administrative law judge on May 5, 1977. No direct review, either administrative or otherwise, was sought of that denial.

The petitioner filed another application for disability insurance benefits on August 1, 1978, alleging the same onset date as previously sought. This claim was also denied throughout the administrative process, including by the ALJ on April 11, 1979, and the

Appeals Council on May 25, 1979. The petitioner commenced a civil action seeking review of the Secretary's decision. Because of a lost tape recording, the record of the hearing could not be presented to the court, so the case was remanded to the Secretary. Another hearing was held, before a different ALJ, David P. Tennant, on January 29, 1981. He rendered a decision on May 28, 1981, finding the petitioner disabled beginning October 13, 1978, and terminating February 1981. The Appeals Council affirmed his order initially but later modified it to provide that the disability had not terminated but was continuing.

The petitioner then brought this action pursuant to 42 U.S.C. 405(g),

seeking an earlier commencement date of the period of disability. The petitioner and the Secretary each moved for judgment on the pleadings,* and those motions were referred to a magistrate for recommendations, pursuant to 28 U.S.C. 636(b). The magistrate on September 27, 1982, recommended denying the petitioner's motion and granting the Secretary's motion. The District Court, on October 22, 1982, adopted by reference the magistrate's findings and recommendations, granted judgment on the pleadings for the Secretary, and dismissed the petitioner's action.

*The docket sheet and the magistrate called the petitioner's motion a "motion for summary judgment," even though it was captioned "MOTION FOR JUDGMENT ON THE PLEADINGS F.R. Civ. Pro. 12(c)." A24. The petitioner believes the mistake to be immaterial to this petition.

The petitioner appealed, and the Court of Appeals issued a per curiam order affirming. Review of that order is sought by this petition.

FACTUAL HISTORY

The petitioner, born in 1950, held a variety of jobs until he was injured in an automobile accident on March 12, 1976. When he arrived at the emergency department of Duke University Medical Center, the doctors reported that his affect was "strangely rigid and inconsistent. He denies feelings of pain, yet reacts physically when stimulated." He was transferred to another hospital for treatment of his physical injuries and was released on the fifth day. The petitioner was seen as an outpatient by Dr. Stephen Lang

during the next three months. In July the petitioner was admitted to a hospital, and his doctor's diagnosis was, in part, anxiety reaction. On July 29, he was examined at another hospital, based on complaints of neck and low back pain, pain in the right eye with blurred vision, daily headaches preceded by dizziness and nausea, passage of blood with bowel movements, and constipation. The doctors said they could find no physical reason for his problems. They referred him to a neurologist, who found no neurologic or musculoskeletal disease. After experiencing abdominal pain, nausea, and vomiting, the petitioner was found in December 1976 to have an active duodenal ulcer. He saw a number of doctors during the next year and a half, and on

May 23, 1978, his treating physician diagnosed "acute, moderately severe anxiety-depression reaction." On October 13, 1978, the petitioner began seeing a psychiatrist, John Giragos, M.D. Dr. Giragos reported that the petitioner initially consulted him, in October 1978, "for depression and inability to function that had been going on for several months." He underwent eight sessions in October and November 1978, and seven sessions in August through October 1979. Dr. Giragos recommended more therapy, but the petitioner could not afford it. Dr. Giragos' diagnosis was "Schizophreniform Disorder and Schizo-affective Disorder with Borderline Intellectual Functioning," or "Paranoid Schizophrenia." The consultative

psychiatrist to whom the petitioner was referred by the Disability Determination Section, Ernest Raba, M.D., diagnosed him on February 16, 1981, as "paranoid personality," and said that the earliest date on which the same level of severity existed was two and one-half years before (which would have been August 16, 1978). At the hearing before ALJ Tennant on January 29, 1981, the petitioner testified he began seeing Dr. Giragos "after things started getting--closing in on me." (Emphasis added.)

ARGUMENT

The court below misconstrued the substantial record test of review and applied a test eschewed more than thirty

years ago. It and other courts need to be told what the proper test is.

The magistrate's findings, which were adopted by the court, accepted the onset date of October 13, 1978, on the ground that the petitioner said he consulted psychiatrist Giragos on that date; the magistrate inferred that the mental problems were not severe until then. Neither the magistrate nor the court (the court adopted the magistrate's findings by reference) mentioned Dr. Giragos' report that the petitioner consulted him for "inability to function that had been going on for several months." Nor did the magistrate mention the consultative psychiatrist's suggestion that the onset date was two and one-half years before his report, or August 16, 1978. Nor did

the magistrate consider the "strange" reaction observed by the emergency department personnel in March 1976, nor the "anxiety reaction" found in July 1976. While the magistrate did discuss Dr. King's diagnosis of May 23, 1978, he read it as "moderately severe anxiety-depression," rather than "acute, moderately severe anxiety-depression reaction."

In essence, the magistrate committed the sin of picking and choosing. He picked and chose only evidence that tended to support the Secretary's decision and ignored evidence to the contrary. While we would submit that all the evidence tends to show an onset date earlier than October 13, 1978, we realize that the court can accord evidence the weight it

wishes. We submit that the error committed below is an example of a basic misunderstanding by district courts and courts of appeal of the substantial record test. Some of them are continuing to operate as they did before Universal Camera Corp. v. N.L.R.B., 340 U.S. 474 (1951), which set forth the history of the courts' review of administrative decisions. The Universal Camera court stated that the reviewing court must

tak[e] into account
contradictory evidence or
evidence from which
conflicting inferences could
be drawn. . . .

340 U.S. at 487. The Ninth Circuit recognized this rule when it stated

[w]e cannot affirm the
examiner's conclusion simply
by isolating a specific
quantum of supporting
evidence.

Day v. Weinberger, 522 F. 2d 1154, 1156
(9th Cir. 1975).

This court, per Mr. Justice Frankfurter, observed that in the standard of review section of the Administrative Procedure Act, Congress adopted the recommendations of the minority of the Attorney General's Committee, which reported that it was time to abandon a prevalent form of review:

[U]nder a "prevalent" interpretation of the "substantial evidence" rule "if what is called 'substantial evidence' is found anywhere in the record to support conclusions of fact, the courts are said to be obliged to sustain the decision without reference to how heavily the countervailing evidence may preponderate--unless indeed the stage of arbitrary decision is reached."

340 U.S. at 481. (Emphasis added.) We note that the court below said the Secretary's decision is "supported by substantial evidence It follows, therefore, that 'it is our duty to affirm.'" The court below virtually tracked the language condemned by Universal Camera. In support of that statement, the court below cited Frady v. Harris, 646 F. 2d 143, 144 (4th Cir. 1981); a reading of that opinion shows no mention of contrary evidence or even of the "record as a whole." Thus the court below and the Frady court were doing what the Attorney General's Committee's minority condemned. Both Judge Friendly (in dissent) of the Second Circuit and Kenneth Culp Davis have written that this practice has not died. N.L.R.B. v. Bausch & Lomb, Inc.,

526 F. 2d 817, 829 (2d Cir. 1975);
Davis, Administrative Law Treatise 29.03
(1982 supp.). This condemned, selective
approach to review exists elsewhere; in
Rose v. Finch, a panel said:

[O]n appeal our function is
not to re-weigh the evidence
but to determine whether
there is such evidence to
support the Secretary's
decision. [Citations
omitted.] There is
substantial and persuasive
evidence that the appellant
has a severe heart condition;
moreover, there is convincing
evidence that the appellant's
back strain is a significant
disability. However, we
cannot say that there is no
substantial evidence to
support the Secretary's
determination. Accordingly,
we must affirm the judgment
of the district court.

409 F. 2d 1329, 1330 (5th Cir. 1969).

The problem may be that the courts
are referring to Social Security's
judicial review statute, which says
"[t]he findings of the Secretary as to

any fact, if supported by substantial evidence shall be conclusive. . . ."

42 U.S.C. 405(g). The statute does not mention contrary evidence or "whole record." In Celebrezze v. O'Brient, 323 F. 2d 989 (5th Cir. 1963), the court reversed the district court and denied benefits, quoting only that language from 42 U.S.C. 405(g) and not mentioning the record as a whole or contrary evidence. The substantial evidence test of the Social Security Act is the same as that articulated in Universal Camera. Flack v. Cohen, 413 F. 2d 278, 279 (4th Cir. 1969). In Blalock v. Richardson, the court stated that the record must be viewed as a whole, 483 F. 2d 773, 775 (4th Cir. 1972), citing Flack v. Cohen. But in neither case, nor in any case turned up by

counsel's research, did the Fourth Circuit mention the impact of contrary evidence.

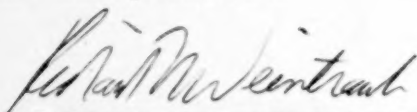
Our complaint is that the Fourth Circuit in this case did not apply the whole record test and failed to consider evidence in favor of the petitioner; if it had, it would have found an earlier onset of disability. While the magistrate's findings referred to "[t]he record as a whole," those findings referred to contrary evidence (without specifying any of it) as "conflicts in the evidence" and stated that "it is not the function of the Court to resolve [such] conflicts. . . , but only to review the Secretary's determinations for substantial supporting evidence." The court below thus treats contrary evidence as if a credibility problem

were involved, but the contrary evidence supporting an earlier onset date is simply reports of several physicians, including the consultative psychiatrist (Dr. Raba) to whom the Disability Determination Section sent the petitioner. Nothing appears to contradict that evidence. It is thus obvious that the courts below misunderstand the proper time to resolve conflicts in the evidence in reviewing administrative action.

CONCLUSION

We submit that in view of the great number of Social Security disability cases in the courts, and of other administrative matters reviewed by the courts under similar statutes, this court ought to state what standard the

courts ought to apply, pursuant to Rule 17.1(a). It has been more than thirty years since Universal Camera, and courts have drifted off the course set by that decision. We therefore ask this court to grant our petition.



Richard N. Weintraub
Counsel for the petitioner
Post Office Box 1188
Durham, North Carolina 27702
(919) 683-1480

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 82-2197

John Douglas,

Appellant,

v.

Margaret M. Heckler,

Secretary of Health and

Human Services,

Appellee.

Appeal from the United States District
Court for the Middle District of North
Carolina, at Durham. Eugene A. Gordon,
District Judge.

Submitted:

Decided:

June 7, 1983

July 14, 1983

Before ERVIN and CHAPMAN, Circuit
Judges, and KNAPP,* District Judge.

Arthur McGlauflin for Appellant.
Benjamin H. White, Jr., Assistant United
States Attorney (Kenneth W. McAllister,
United States Attorney on brief) for
Appellee.

*Honorable Dennis R. Knapp, United
States District Judge for the Southern
District of West Virginia, sitting by
designation.

PER CURIAM:

John Douglas sought judicial review of the decision of the Secretary of Health and Human Services determining him disabled but setting the onset date of disability at October 13, 1978, rather than March 12, 1976, the date Douglas proposed. The district court accepted a magistrate's recommendation to uphold the Secretary's action. Douglas appeals.

With the agreement of counsel for both parties, we are deciding this case on the briefs without oral argument.

We have reviewed the record and considered the arguments of counsel. We conclude that the Secretary's determination is supported by substantial evidence and comports with

existing law. It follows, therefore,
that "it is our duty to affirm."

Frady v. Harris, 646 F.2d 143, 144
(4th Cir. 1981).

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT
OF NORTH CAROLINA
DURHAM DIVISION

JOHN DOUGLAS,	)	[entered
	)	October 22,
Plaintiff,	)	1982]
)	
v.	)	C-79-662-D
)	
RICHARD S. SCHWEIKER,)	
)	
Secretary of Health)	
)	
and Human Services,)	
)	
Defendant.)	

J-U-D-G-M-E-N-T

On September 27, 1982, in
accordance with 28 U.S.C. § 636(b), the
Findings and Recommendations of the
United States Magistrate were filed and
served on the parties in this action and
a copy was given to the Court.

Within the time limitation set forth in the statute, counsel for the plaintiff objected to the Findings and Recommendations.

The Court has appropriately reviewed the portions of the Magistrate's report to which objection was made and has made a de novo determination which is in accord with the Magistrate's report. The Court therefore adopts the Magistrate's Findings and Recommendations.

IT IS THEREFORE ORDERED AND ADJUDGED that the decision of the Secretary be and is hereby affirmed and the action dismissed with costs assessed to the plaintiff.

/s/ Eugene A. Gordon

United States District Judge

October 22, 1982

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT
OF NORTH CAROLINA
DURHAM DIVISION

JOHN DOUGLAS,	)	[entered
	)	September 27,
Plaintiff,	)	1982]
)	
v.	)	C-79-662-D
)	
RICHARD S. SCHWEIKER,)	
)	
Secretary of Health)	
)	
and Human Services,)	
)	
Defendant.))	

MAGISTRATE'S FINDINGS

AND RECOMMENDATIONS

Plaintiff first filed an application for disability insurance benefits on August 6, 1976, alleging disability beginning on March 12, 1976. (Tr., pp. 112-115.) The claim was

denied initially and upon reconsideration and was further denied in a decision rendered, after hearing, by Administrative Law Judge John J. Forbes, Jr., on May 5, 1977. (Tr., pp. 176-183.) Plaintiff did not pursue further administrative remedies and therefore the Administrative Law Judge's decision became final.

Plaintiff again filed a claim for disability benefits on August 1, 1978, alleging an onset date of March 12, 1976. (Tr., pp. 184-187.) Plaintiff's application was denied initially and upon reconsideration and was again denied in a decision rendered, after hearing, by Administrative Law Judge Robert F. Thomas on April 11, 1979. (Tr., pp. 352-360.) Plaintiff requested review by the Appeals Council, and the

Council, on May 25, 1979, reviewed and adopted the decision of the Administrative Law Judge as the final decision of the Secretary.

(Tr., p. 364.)

Plaintiff then instituted this action seeking review of the Secretary's decision. The case was remanded to the Secretary for further consideration when it appeared that the administrative record could not be presented to the Court as a result of a lost tape recording. (Tr., p. 35.)

Administrative Law Judge David P. Tennant conducted another hearing on January 29, 1981. (Tr., pp. 45-109.) The Administrative Law Judge (ALJ) rendered his decision on May 28, 1981, finding plaintiff disabled beginning on October 13, 1978, and terminating in

February 1981. (Tr., pp. 16-24.) The Appeals Council affirmed the decision. (Tr., p. 14.) Thereafter, on November 17, 1981, the Appeals Council issued an amended decision, citing further evidence of plaintiff's continuing disability, and holding that plaintiff's period of disability began on October 13, 1978, but had not terminated and was still continuing. (Tr., pp. 7-8.)

Plaintiff now claims before this Court that the Secretary erred in beginning his period of disability on October 13, 1978, rather than on March 12, 1976. Plaintiff contends that no substantial evidence in the record supports the Secretary's determination that plaintiff was not disabled during the two and one-half year period between

March 1976 and October 1978. As a basis for disability during this time period, plaintiff points primarily to an ulcer condition, weight loss, and psychiatric impairment. (Plaintiff's Memorandum of Law, filed July 1, 1982, pp. 12-13.)

Defendant asserts that the decision of the Secretary is supported by substantial evidence and should be affirmed. Defendant also contends that the time period in issue here is limited to May 5, 1977, through October 13, 1978, "as the administrative law judge's decision of May 5, 1977 has not been reopened. . . ." (Defendant's Argument and Proposed Findings of Fact, filed September 9, 1982, p. 3, n.2.) However, since Administrative Law Judge Tennant accepted and considered evidence going back to March 12, 1976, and made

findings reaching back to that time, this Court will consider that plaintiff's first claim of August 6, 1976, has been effectively reopened during administrative review and is before the Court for review. McGowen v. Harris, 666 F.2d 60 (4th Cir. 1981); Farley v. Califano, 599 F.2d 606 (4th Cir. 1979); 20 C.F.R. § 404.989.

Plaintiff is a 32 year old man with a high school education plus additional training in a technical school.

(Tr., p. 216.) He has worked in the past as a cleaner in a dry cleaning establishment (Tr., p. 216), waiter (Tr., p. 58), bartender (Tr., p. 58), truck driver, cook, janitor (Tr. p. 60), and a lounge manager (Tr., p. 60).

Plaintiff alleged that he became disabled on March 12, 1976, due to back,

neck, and stomach injuries suffered in an automobile accident. (Tr., p. 184.) Plaintiff has alleged further medical problems since that time, including weakness, dizziness, leg numbness, an ulcer, weight loss, and psychiatric disturbance. (Tr., pp. 63-64, 73.) The ground upon which the ALJ found plaintiff to be disabled, beginning on October 13, 1978, is the combined effect of plaintiff's peptic ulcer disease and his psychiatric impairment. (Tr., p. 24.)

The scope of judicial review of the Secretary's decision denying disability status has been described by our Circuit as "extremely limited." Frady v. Harris, 646 F.2d 143, 144 (4th Cir. 1981). The Court must carefully review the entire record to determine whether

the Secretary has applied correct legal standards, and whether his findings are supported by substantial evidence.

Locklear v. Mathews, 424 F. Supp. 639 (D.Md. 1976). Where this is so, however, those findings are conclusive. The Court is not entitled to reweigh the evidence, nor to resolve conflicts or determine matters of credibility; these are the functions of the trier of fact. Seacrist v. Weinberger, 538 F.2d 1054, 1056-57 (4th Cir. 1976).

Careful examination of the record as a whole in this case causes the Court to conclude that substantial evidence does support the Secretary's findings. As to each condition alleged by plaintiff, evidence supporting the ALJ's determination of no disability prior to October 13, 1978, may be found in the

record. That is not to say that other evidence, supportive of plaintiff's claims, does not exist, but it is the Secretary's duty to resolve conflicts in the evidence, and it is the claimant who bears the risk of nonpersuasion.

Seacrist v. Weinberger, supra.

Plaintiff contends that his peptic ulcer disease was just as serious in March 1976 as it was on October 13, 1978, so the evidence before the ALJ can only be interpreted to show disability reaching back to March 1976. This contention overlooks important evidence. It is true that an upper gastro intestinal [sic] series in December of 1976 revealed that plaintiff had an active duodenal ulcer. (Tr., p. 169.) Dr. S.E. Harrell, a treating physician of plaintiff, reported on January 3,

1977 that plaintiff had recently been hospitalized for treatment of a peptic ulcer. He further stated that plaintiff "is currently being treated at home, and will most likely be under treatment for the next two to three months."

(Tr., p. 288.) On May 25, 1977, plaintiff reported that his peptic ulcer disease had been quiet. (Tr., p. 220.)

Dr. Robert E. King, another of plaintiff's treating physicians, prepared a report concerning his treatment of plaintiff from November 12, 1977, through May 9, 1978, and stated simply, in regard to plaintiff's ulcer, that "he was prescribed a bland diet and medication for same. . . ." (Tr., p. 241.) Dr. King noted no problems concerning plaintiff's ulcer during this time period. On September 8, 1978,

Dr. Harrell, in a phone report to the Social Security Administration, reported that plaintiff had been treated conservatively in regard to his duodenal ulcer, with good results. He further reported that plaintiff had not lost any significant amounts of weight since March of 1976, and that his hematocrit had always remained within normal limits. (Tr., p. 224.)

Medical conditions which are satisfactorily controlled by medication may not be the basis of a disability determination. Willis v. Gardner, 377 F.2d 533 (4th Cir. 1967); Epps v. Harris, 624 F.2d 1267, 1270 (5th Cir. 1980). The record in this case includes substantial evidence that plaintiff's ulcer was controlled and was not causing serious problems during extended periods

of time between at least January 3, 1977, and October 13, 1978. Therefore, substantial evidence supports the ALJ's finding that prior to October 13, 1978, plaintiff's ulcer was not disabling to him (Tr., p. 24), in that it did not represent a severe impairment which lasted or could have been expected to last for a continual period of not less than 12 months. 20 C.F.R. § 404.1505. The fact that plaintiff's ulcer apparently caused him further problems in late 1978 and 1979 (Tr., p. 243), does not require a finding that it caused disability in 1977 and 1978 in view of the evidence in the record set forth above.

Plaintiff also points to evidence of weight loss and contends that the fact that plaintiff's weight dropped as

low as 119 and 1/2 pounds on August 4, 1977 (Tr., p. 222) establishes disability under Table I of Listing 5.08A (20 C.F.R. Subpart P, App. 1), in view of plaintiff's height of 6'0" (Tr., p. 200). The Appeals Council rejected this argument on the ground that plaintiff's weight was also reported at 124 and 1/2 pounds on November 12, 1977 and again on June 22, 1978. (Tr., pp. 241, 299.) In that these weights are above the weight guidelines set forth in Table I of Listing 5.08A, plaintiff fails to meet the durational requirement of one year for a weight-related impairment as prescribed by the Social Security regulations. 20 C.F.R. § 1505; 20 C.F.R. § 1520(d). We find no error

in the ruling of the Secretary on this ground.

During the administrative proceedings, plaintiff complained repeatedly of aches and pains, weakness, numbness, and headaches. The record shows that these complaints could not, on their own, support a finding of disability. As counsel for plaintiff concedes, no objective basis for these various pains has been located by any physician. (See plaintiff's Memorandum of Law, p. 12.) Dr. Stephen Levitt examined plaintiff in May 1980 and concluded that "this man's various pains or symptoms are related to his emotional illness. . . ." (Tr., p. 316.)

Although several doctors had expressed opinions that plaintiff was unable to work as the result of musculoskeletal

syndrome and general pain and weakness (Tr., pp. 291, 156, 162, 158, 238, 240), their opinions were wholly without support in objective clinical findings (as the doctors themselves generally acknowledged), and therefore the ALJ was not required to lend them great weight. Cummings v. Harris, 513 F. Supp. 35 (S.D. Ohio 1980). The ALJ's finding that plaintiff does not suffer from disabling pain will not be disturbed.

We reach finally plaintiff's contention in regard to his mental impairment. It is clear from review of the record that this impairment, diagnosed as depression, suicidal ideation, Schizophrenia, and paranoia (Tr., pp. 245, 303, 377), is the primary basis for the ALJ's finding that plaintiff is disabled, with an onset

date of October 13, 1978. That date is the occasion on which plaintiff was first seen by Dr. John Giragos, a psychiatrist, who diagnosed severe mental impairment. That diagnosis, for the first time, permitted plaintiff to make a prima facie showing of mental impairment. See Lewis v. Weinberger, 541 F.2d 417 (4th Cir. 1976). In finding substantial evidence which supports the ALJ's finding of an onset date of October 13, 1978 for plaintiff's severe mental impairment, the Court need go no further than plaintiff's own testimony. At hearing, plaintiff testified that he first began to see Dr. Giragos (on October 13, 1978), "[a]fter things started getting--closing in on me. . . ." (Tr., p. 73.) Plaintiff explained that at that time legal

problems, financial problems, and physical and mental problems began to "close in on" him; as a result he started seeing Dr. Giragos on his own initiative and without referral by a physician. (Tr., pp. 73-74.) Thus, plaintiff's testimony supports the ALJ's conclusion that plaintiff's mental condition first reached a severe level at the time when he started to consult Dr. Giragos.

The record as a whole in regard to plaintiff's mental impairment does not require a conclusion, as plaintiff contends, that plaintiff was mentally impaired prior to October 13, 1978. A May 23, 1978 report drawn by Dr. King contains a diagnosis of moderately severe anxiety-depression, but findings of anxiety and depression do not

necessarily require a finding of disability. Riggin v. Califano, 432 F. Supp. 65 (D.Md. 1977). While it is true that some evidence in the record may show emotional problems on the part of plaintiff prior to October 1978, it is not the function of this Court to resolve conflicts in the evidence, but only to review the Secretary's determinations for substantial supporting evidence. Such support is clearly present here on the basis of plaintiff's own testimony that things began to "close in on" him in October 1978.

IT IS THEREFORE RECOMMENDED that plaintiff's motion for summary judgment be denied, that the Secretary's motion for judgment on the pleadings be

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granted, and that this action be
dismissed.

/s/ P. Trevor Sharpe

P. Trevor Sharpe
United States Magistrate

September 27, 1982

DEPARTMENT OF
HEALTH AND HUMAN SERVICES
SOCIAL SECURITY ADMINISTRATION
OFFICE OF HEARINGS AND APPEALS

AMENDED DECISION OF APPEALS COUNCIL

In the case of) Claim for
))
John Douglas) Period of Disability
))
) and Disability
))
) Insurance Benefits
))
) 237-88-7516
) (Social Security
) Number)

The United States District Court for the
Middle District of North Carolina
remanded this case (Civil Action Number
C-79-662-D) to the Secretary of Health
and Human Services for further
administrative action. Thereafter, the

Appeals Council remanded the case to an administrative law judge.

On July 23, 1981, the Appeals Council issued a decision adopting the findings and conclusions in the recommended decision issued by the administrative law judge on May 28, 1981. Thereafter, it was discovered that the claimant's attorney had submitted objections and additional medical evidence. Therefore, the decision of the Appeals Council dated July 23, 1981, is amended herein.

Documents not previously available to and considered by the Appeals Council are hereby entered into the record as follows.

Exhibit AC-1 Letter dated June 4,
1981, from the
claimant's attorney
to the Appeals
Council.

Exhibit AC-2 Medical report dated
June 23, 1981, signed
by James H. Carter,
M.D., and covering
letter dated July 1,
1981, from the
claimant's attorney.

Exhibit AC-3 Medical report dated
October 15, 1981,
signed by James H.
Carter, M.D., and
covering letter dated
October 20, 1981,
from the claimant's
attorney.

In his letter of June 4, 1981, the claimant's attorney urges that the claimant's disability be found to have commenced before October 13, 1978. In support of his position, the attorney pointed out that the claimant's weight was recorded at 119 1/2 pounds on August 4, 1977 (Exhibit B-15) and at 119 pounds on December 23, 1978 (Exhibit B-68). Counsel avers that no other weights are recorded between those dates. The Appeals Council must respectfully disagree. The record shows that the claimant's weight was recorded at 124 1/2 pounds on November 12, 1977 and again on June 22, 1978 (Exhibit B-25). Although his weight dropped to 119 pounds on December 23, 1978, it also went up to 122 pounds on June 2, 1979, and he continues to gain.

having attained 136 pounds by April 13, 1981 (Exhibit B-68). Accordingly, the Appeals Council rejects counsel's argument that the claimant met Listing 5.08A as of August 4, 1977.

Counsel also urges that the claimant be found disabled prior to October 13, 1978, on account of his psychiatric impairment. After again reviewing the record, the Appeals Council finds no basis for this position. However, based on the new evidence submitted by the claimant's attorney, the Appeals Council is persuaded that the claimant's impairment, which began on October 13, 1978, did not subside in February 1981, but is continuing.

It is, therefore, the decision of the Appeals Council that, based on the application filed on August 1, 1978, the claimant is entitled to a period of disability which began on October 13, 1978, but not prior thereto, and to disability insurance benefits under sections 216(i) and 223 of the Social Security Act, as amended, and that such disability continues on the date of this decision.

APPEALS COUNCIL

/s/ Marshall C. Gardner

Marshall C. Gardner, Member

/s/ John W. Chambers

John W. Chambers, Member

DATE: NOV 17 1981

DEPARTMENT OF
HEALTH AND HUMAN SERVICES
SOCIAL SECURITY ADMINISTRATION
OFFICE OF HEARINGS AND APPEALS

DECISION OF APPEALS COUNCIL

In the case of	)	Claim for
)	
John Douglass	)	Period of Disability
)	
[sic]	)	and Disability
)	
	)	Insurance Benefits
)	
	)	237-88-7516
	)	(Social Security
	)	Number)

The United States District Court for the
Middle District of North Carolina
remanded this case (Civil Action
Number C-79-662-D) to the Secretary of
Health and Human Services for further
administrative action. Thereafter, the

Appeals Council remanded the case to an administrative law judge.

On May 28, 1981, the administrative law judge issued a recommended decision and advised claimant and counsel that any exception, objection, or comment concerning the recommended decision should be filed with the Appeals Council within twenty (20) days. None has been received.

The Appeals Council adopts the findings and conclusions in the recommended decision. It is the decision of the Appeals Council that, based on the application filed on August 1, 1978, the claimant is entitled to a period of disability which began on October 13, 1978, and ended with the close of April

1981 (the second month following the month in which his disability ceased) and to disability insurance benefits under sections 216(i) and 223 of the Social Security Act, as amended.

APPEALS COUNCIL

/s/ Marshall C. Gardner

Marshall C. Gardner, Member

/s/ John W. Chambers

John W. Chambers, Member

DATE: JUL 23 1981

DEPARTMENT OF
HEALTH AND HUMAN SERVICES
SOCIAL SECURITY ADMINISTRATION
OFFICE OF HEARINGS AND APPEALS

RECOMMENDED

DECISION

In the case of	)	Claim for
)	
John Douglass	)	Period of Disability
)	
[sic]	)	and Disability
)	
	)	Insurance Benefits
)	
	)	237-88-7516
	)	(Social Security
	)	Number)

This case is before the Administrative
Law Judge on remand from the United
States District Court for the Middle
District of North Carolina.

ISSUES

The general issues before the Administrative Law Judge on this claim for a period of disability and disability insurance benefits are whether the claimant is entitled to a period of disability and to disability insurance benefits under Sections 216(i) and 223, respectively, of the Social Security Act, as amended. The specific issues are whether the claimant was under a "disability," as defined in the Act, and if so, when the "disability" commenced and its duration; and whether the special earnings requirements of the Act are met for the purpose of entitlement.

LAW AND REGULATIONS

Section 216(i) of the Social Security Act provides for the establishment of a period of disability and Section 223(a) provides for the payment of disability insurance benefits when the requirements are met.

Section 223(d)(1)(A) defines

"disability" as the

"inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which as lasted or can be expected to last for a continuous period of not less than 12 months."

Section 223(d)(3) provides that

"a 'physical or mental impairment' is an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques."

Section 404.1520 of Social Security Regulations No. 4 provides for a sequential evaluation of disability. In cases where the claimant is not performing substantial gainful activity (See Section 404.1571ff); has a severe impairment (See Section 404.1521); does not have an impairment or combination of impairments which either meets, or is the medical equivalent of, a listed impairment in the Listing of Impairments in Appendix 1 (See Sections 404.1525 and 404.1526); and is prevented from doing past relevant work; the claimant will be found disabled if he or she cannot perform other work consistent with his or her residual functional capacity, age, education and past work experience. If a finding of "disabled" or "not disabled " can be made at any point in

the sequential evaluation, no further review will be made.

Section 404.1545 provides that the assessment of residual functional capacity will be based on medical evidence of physical, mental, and other impairments along with descriptions and observations of work limitations in addition to those usually made during formal medical examinations. This assessment includes consideration of the capacity to walk, stand, lift, carry, push, pull, handle; to understand, carry out and remember instructions; and to respond appropriately to supervision, co-workers, and work pressures. Consideration is also given to skin impairments, epilepsy, and impairments of vision and hearing or other senses,

postural and manipulative limitations,
and environmental restrictions.

Section 404.1546 provides that the
responsibility for deciding residual
functional capacity, in cases at the
hearing level, rests with the
Administrative Law Judge.

Section 404.1561 provides, in part, that
where the determined residual functional
capacity is sufficient to enable the
claimant to do past relevant work, he or
she will be found not disabled.

EVIDENCE CONSIDERED

The Administrative Law Judge has
carefully considered all the testimony
at the supplemental hearing and the
documentary evidence described in the

list of exhibits attached to this decision.

EVALUATION OF THE EVIDENCE

The claimant filed his first application for a period of disability and disability insurance benefits on August 6, 1976, alleging disability beginning on March 12, 1976. This claim was denied initially and upon reconsideration, after which an Administrative Law Judge issued a decision dated May 5, 1977, finding that the claimant retained the capacity to return to his past relevant work. Although the claimant was informed of his right to request review by the Appeals Council, he took no further action.

The claimant filed his current application for a period of disability and disability insurance benefits on August 1, 1978. He again alleged disability beginning on March 12, 1976. After initial and reconsideration denials, an Administrative Law Judge issued a decision on April 11, 1979, finding that the claimant's impairments had not significantly reduced his residual functional capacity. On May 25, 1979, the Appeals Council denied the claimant's request for review. Thereafter, he instituted a civil action in the United States District Court for the Middle District of North Carolina. On April 8, 1980, the District Court remanded this case to the Secretary on the Secretary's motion. On November 24, 1980, the Appeals Council, in turn,

remanded the case to the undersigned Administrative Law Judge with instructions to obtain a consultative psychiatric examination with psychometric testing and a residual functional capacity evaluation. These examinations have been obtained. In addition, a supplemental hearing was held and the claimant's attorney has submitted additional evidence.

The claimant appeared and testified at the supplemental hearing held on January 29, 1981, at Raleigh, North Carolina. He was represented by Charles T. Hall, Esq., and William E. Anderson, Esq., members of the North Carolina bar. The claimant testified that he was born on July 24, 1950, is a high school graduate and attended Durham

Technical Institute for one and a half years in an architectural engineering course. The claimant stated that he is 5 feet 10 inches tall and weighs 139 pounds. He is divorced and has two daughters who live with his ex-wife. He currently lives in a studio apartment with a friend. The claimant has worked as a waiter, as a presser and truck driver for a dry cleaning company, as a bartender, cook, janitor and lounge manager. He last worked on March 11, 1976, and stopped work because of injuries received during an automobile accident. Thereafter, he experienced back, neck and stomach problems. He subsequently developed complaints of weakness, dizziness, and numbness in both legs. He stated that as of the time of the hearing he continues to

experience pain when engaging in strenuous activity. He has also received treatment for a stomach ulcer which continues to bother him at times. He stated that his weight was approximately 140 pounds prior to the accident but dipped down to 124 pounds. He has regained some weight in the past three or four months because he is eating more and is more relaxed. He has a valid driver's license and occasionally drives short distances. He complained of difficulty hearing which began after his jaw was broken in 1979. He stated that his vision is adequate except he occasionally gets pain behind his right eye. His activities include some reading, watching television, listening to the radio, taking occasional walks, visiting friends and

relatives, playing chess, doing very light housework, and cooking very light meals. The claimant alleged that his sleep is interrupted by pain on occasion. He then must take a pain pill in order to sleep. He usually does not take pain medication during the day but only prior to bedtime. He occasionally does exercises but complains that they sometimes cause him pain. He began seeing a psychiatrist in 1978, because of legal and financial stress. He was beaten in 1979, and suffered a broken jaw. Since then he has required surgery for repair of the fracture and now needs extensive dental work as a result. He alleged that he cannot work because he has been under a doctor's care for the last five or six years, has a mental disorder, and suffers musculoskeletal

and stomach pain. He stated he cannot stand or sit for more than 30 minutes at a time. He was evaluated by Goodwill Industries in 1980, but was terminated because of his legal difficulties.

The decisions issued on May 5, 1977 and April 11, 1979, contain adequate summaries of the evidence which was of record as of those dates. There is no need to resummairize that evidence here. The summaries of the evidence contained in the decisions issued on May 5, 1977 and April 11, 1979, are adopted and are hereby incorporated into this decision. The medical evidence submitted on remand includes reports and copies of office notes from Robert E. King, M.D., the claimant's treating physician. On December 29, 1980, he stated that the

claimant has been totally incapacitated since 1978, due to chronic peptic ulcer disease and a musculoskeletal syndrome (Exhibit B-62). Office notes dating back to December 23, 1973, show that the claimant has been treated for musculoskeletal pain, a gastric ulcer, and headaches. He recorded the claimant's weight on several occasions. On February 10, 1979, it was 119. On April 23, 1979, it was 120. On May 28, 1979, it was 122. The claimant's weight gradually increased until January 26, 1981, when it was recorded as 133. The last weight recorded on April 13, 1981, was 136. Dr. King stated in a note that on February 5, 1981, the claimant was asymptomatic. A routine examination was not remarkable. On February 23, 1981, the claimant reported that he had

recently been discharged from the Duke Hospital. He stated that he was "feeling okay at the time" (Exhibits B-62 and B-68).

On January 21, 1981, the claimant underwent a psychological evaluation performed by Vincent J. Maginn, Ph.D., a clinical psychologist. A WAIS revealed full-scale, verbal and performance IQ scores of 86. Intra and inter subtest variability indicated that emotional factors were placing some limitations on the claimant's cognitive functioning. There was some evidence of concentration and attention difficulties and limitations on the claimant's ability to think abstractly. There were indications of a paranoid personality disorder but reality testing was normal.

There were no indications of unusual bizarre or psychotic thinking. Dr. Maginn felt that the claimant would be able to manage benefits in his own best interests. He concluded that the claimant was able to respond to three-step directions and was able to perform routine, repetitive tasks under close supervision in an emotionally supportive low pressure work situation (Exhibit B-63).

A consultative psychiatric examination was performed on February 16, 1981, by E. A. Raba, M.D., a Board-certified psychiatrist. There was evidence of a somewhat paranoid thought system, a blunted, constricted affect, and concrete thinking. No other mental status abnormalities were noted. The

claimant was oriented in all spheres, had adequate judgment, his attention span was unremarkable and there was no defect in immediate recall, recent memory, or remote memory. Dr. Raba's diagnosis was paranoid personality. He stated that the claimant's paranoid thought system slightly compromises the capacity to test reality but further stated that there is no evidence for any impairment in normal mood regulatory ability. He stated, "This individual is entirely ambulatory." He recommended further care at his local mental health center. He noted that the claimant had shown significant improvement on low doses of Haldol and therefore recommended increased dose of a major tranquilizer. He estimated that the overall prognosis was at least fair.

Dr. Raba completed a residual functional capacity questionnaire indicating that the claimant has a moderate impairment in his ability to relate to others and a moderate constriction of interests. He estimated no deterioration in personal habits and only a mild restriction of daily activities. He stated that the claimant had no impairment in his ability to understand, carry out and remember instructions, to respond appropriately to supervision and to perform simple and repetitive tasks. He estimated mild restrictions in the claimant's ability to respond to co-workers, to respond to customary work pressures and to perform complex and varied tasks. Dr. Raba concluded that there was no evidence of any loss of

psychiatric function due to pain during the examination itself (Exhibit B-64).

Records from the Duke University Medical Center show that the claimant was admitted on February 10, 1979, after he had been severely beaten around the left side of the face. He suffered a small laceration around the left mandible and left ear and a fracture of the mandible. The claimant underwent open reduction and internal fixation of the mandibular symphysis fracture. The surgery was uneventful and the postoperative course was without complications. He was discharged on February 21, 1979. On March 8, 1979, the claimant complained of a noise in his left ear. He was seen at the ENT clinic on March 12, 1979. Physical examination was negative except

for a positive Rinn [sic] test. On July 2, 1979, the claimant underwent audiological testing which was completely normal. He reported then that his tinnitus had resolved. The claimant's attorney also submitted a copy of a Duke University Medical Center outpatient clinic note dated October 1, 1976, when the claimant was seen for complaints of neck and back pain. A complete physical and neurological examination was completely normal. The assessment was "Compensationitis. No neurological disease on PE. Patient admits wanting to get on disability. Doubt headache represents significant pathology." (Exhibit B-66). A letter from John G. Giragos, M.D., the claimant's treating psychiatrist, indicates that he last saw the claimant

on September 8, 1980, when he started on Haldol. He has not seen the claimant since then. He stated that the claimant's weight gain could be a result of the medication (Exhibit B-67).

The claimant's attorney also submitted a report of an initial evaluation from the Paul Proud Physical Therapy Associates dated April 6, 1979. The claimant's chief complaints were pain in the back, dizziness, and neck cramps. Physical examination was grossly normal. The claimant was started on a regime of moist heat followed by massage to the low back and cervical region and upper back extension and lower back flexion exercises (Exhibit B-68).

The claimant alleges disability since March 12, 1976. The medical evidence shows that the claimant was involved in an automobile accident on that date and subsequently complained of musculoskeletal pain in his neck and back. He also alleged various other vague symptoms, including numbness and weakness. Since March 1976, the claimant has undergone a multitude of examinations and diagnostic tests. He has been seen by orthopedists, neurologists, a chiropractor, and a physical therapist. None has reported any significant objective abnormalities to explain the claimant's allegations of musculoskeletal pain, numbness and weakness. On one occasion, some questionable muscle spasm was reported. However, there is absolutely no evidence

of any neurological changes, objective limitation of motion, swelling, deformity, or effusion of any joint. Several different x-rays were reported as completely normal. On several occasions the credibility of the claimant's subjective complaints was questioned by examining physicians. On one occasion the claimant complained of stomach pain after having been swimming. On another, he complained of musculoskeletal pain after dancing. The two previous Administrative Law Judges who observed the claimant at a hearing and assessed the credibility of his subjective complaints found them to be not credible. At the supplemental hearing held on January 29, 1981, the claimant appeared to be in no observable distress. He rose quickly to take the

oath and sat without using his hands on the arms of his chair for support. The medical evidence of record does not show a basis for the claimant's complaints of musculoskeletal pain, numbness and resulting limitation of function. Based on observation of the claimant at the hearing, review of the medical evidence, and consideration of the claimant's allegations with regard to his daily activities and his level of pain medication, the undersigned Administrative Law Judge finds that the claimant's allegation of severe musculoskeletal pain and limitation of function is not credible. Therefore, the Administrative Law Judge concludes that the claimant has not suffered any significant musculoskeletal impairment which lasted for a continuous twelve

month period beginning on or before the date of this decision.

The medical evidence however does establish that the claimant has two significant impairments. A gastrointestinal series performed on December 10, 1976, at the Watts Hospital in Durham, North Carolina, demonstrated the presence of an active duodenal ulcer. However, on May 25, 1977, the claimant reported that his ulcer had been quiet. He was at that time complaining of musculoskeletal pain after he had gone dancing (Exhibit B-14). On September 12, 1978, one of the claimant's treating physicians, Dr. Harrell, reported that the claimant's ulcer had been treated conservatively with good results. He

further stated that the claimant weighed 125 pounds in March 1976, and had not lost any significant amount of weight since that time. His hematocrit had remained within normal limits

(Exhibit B-16). The first indication in the medical record that the claimant's weight had been reduced to the level outlined in Table I of Listing 5.08A is a note dated February 10, 1979, showing that the claimant's weight was

119 pounds. Therefore, the

Administrative Law Judge finds that the claimant's peptic ulcer disease did not meet or equal the level of severity outlined in the Listings until

February 10, 1979. There is no evidence of any other symptoms associated with this ailment except for intermittent, vague complaints of stomach pain. At

all times prior to that date, the peptic ulcer disease would not have precluded the claimant from returning to any of his past relevant work.

The evidence also shows that the claimant has a significant emotional impairment. On May 23, 1978, Dr. King diagnosed moderately severe anxiety and depression, but reported no mental status abnormalities. There is no earlier evidence in the record of any significant psychiatric problem. The evidence further shows that on October 13, 1978, the claimant sought treatment from Dr. Giragos, his treating psychiatrist. Subsequent reports from Dr. Giragos indicate the presence of delusions, an inappropriate affect, regressive behavior, agitation,

looseness of associations, restriction of daily activities, constriction of interests, impaired ability to relate to others, intellectual deficiency, and anxiety and depression. Dr. Giragos' diagnoses were schizoid personality and paranoid schizophrenia. These findings were confirmed by a consulting psychiatrist who examined the claimant on May 30, 1980, and stated that the claimant is probably schizophrenic, paranoid type. He recommended psychiatric treatment and a trial of antipsychotic medication (Exhibit B-52). After viewing all of the evidence of record in a light most favorable to the claimant, the Administrative Law Judge finds that the combination of the claimant's psychiatric disorder and gastrointestinal impairment prevented

him from engaging in any substantial gainful activity as of October 13, 1978, when the claimant's psychiatric impairment first became so severe that it required professional treatment. Therefore, the Administrative Law Judge finds that the claimant was under a "disability" as that term is defined in the Social Security Act as of October 13, 1978.

Evidence submitted on remand, including a report of psychological evaluation, a psychiatric examination, and the office notes of the claimant's treating physician, establishes that the claimant's disability ceased in February 1981. The report from the consulting psychiatrist contained a diagnosis of paranoid personality. However, this

report indicates a nearly normal mental status and reflects significant improvement in the claimant's psychiatric condition due to low doses of Haldol. The residual functional capacity questionnaire completed by this psychiatrist indicates at most, only mild impairments of the claimant's ability to perform work activities. Although he continued to have a moderate impairment of his ability to relate to others and a moderate constriction of interest, there was only a mild restriction of daily activities and no deterioration of personal habits. Therefore, the Administrative Law Judge finds that as of February 1981, the claimant's psychiatric impairment had significantly improved and did not prevent him from understanding,

remembering, and carrying out instructions or from responding appropriately to supervision, co-workers and customary work pressures. The claimant recovered the capacity to perform simple repetitive tasks or complex varied tasks.

With regard to the claimant's peptic ulcer disease, the notes from the treating physician show that as of February 5, 1981, the claimant's weight was 133 pounds. He continued to gain weight until the date of the hearing. Although Giragos stated that the weight gain could be due to medication, the claimant testified at the hearing that he gained weight because he was more relaxed and was eating more. Therefore, the Administrative Law Judge finds that

as of February 1981, the claimant's peptic ulcer disease no longer met the level of severity outlined in the Listings. Moreover, it had improved to a point where the claimant was capable of performing at least medium work activity. This finding, in combination with the finding that the claimant's psychiatric status had significantly improved, leads the Administrative Law Judge to the conclusion that as of February 1981, the claimant had recovered the functional capacity to return to his past relevant work as a waiter, as a presser and truck driver for a dry cleaning company, or as a bartender.

In reaching this conclusion, the Administrative Law Judge has given due

consideration to the claimant's allegation at the hearing that his memory and ability to concentrate have been affected. Dr. Raba noted that the claimant's remote, recent and immediate memory was intact. At the hearing the claimant was articulate and answered questions by the Administrative Law Judge and by his attorney quickly and to the point. Although the claimant has a long medical history and has seen numerous physicians, he provided accurate information with regard to the doctors' names and the dates on which he had seen them. Therefore, the Administrative Law Judge finds that as of February 1981, the claimant's psychiatric impairment was only mild in severity and would not preclude the

claimant from returning to past relevant work.

The Administrative Law Judge has also given consideration to the opinions expressed by some of the claimant's treating physicians, that he has been disabled since 1976. As the foregoing analysis of the evidence shows, the objective clinical data wholly failed to substantiate such opinions. Moreover, they are inconsistent with the objective data and the opinions advanced by examining physicians at the Duke University Medical Center and by other of the claimant's treating physicians. Therefore, little evidentiary weight has been accorded these opinions.

In summary, the Administrative Law Judge finds that the combination of the claimant's psychiatric and gastrointestinal disorders rendered him "disabled" as of October 13, 1978. However, both of these disorders improved considerably by February 1981, when the claimant recovered the capacity to return to his past relevant work.

FINDINGS

The Administrative Law Judge makes the following findings:

1. The claimant filed his current application for a period of disability and disability insurance benefits on August 1, 1978.
2. The claimant met the special disability earnings requirements of the Act on March 12, 1976, the

alleged date of disability, and continued to meet them through September 30, 1980, but not thereafter.

3. Prior to October 13, 1978, the claimant's impairment was a duodenal ulcer which did not prevent the claimant from performing his past relevant work.

4. The claimant has not suffered disabling pain.

5. As of October 13, 1978, the combination of the claimant's peptic ulcer disease and his psychiatric impairment prevented him from engaging in any substantial gainful activity.

6. As of February 1981, the claimant's peptic ulcer disease and

psychiatric impairment significantly improved.

7. As of February 1981, the claimant recovered the capacity to return to his past relevant work as a waiter, presser and truck driver for a dry cleaning company, and as a bartender.

8. As of February 1981, the claimant was no longer under a "disability" as defined in the Social Security Act, as amended.

RECOMMENDED DECISION

It is the recommended decision of the Administrative Law Judge that, based on the application filed on August 1, 1978, the claimant is entitled to a period of disability beginning on October 13, 1978, and to disability insurance benefits under Sections 216(i) and

223(a), respectively, of the Social Security Act, as amended. It is the further recommended decision of the Administrative Law Judge that the claimant's disability ceased in February 1981, and that his entitlement to a period of disability and to disability insurance benefits terminated with the close of April 1981, the second month following the month in which disability ceased.

/s/ David P. Tennant

David P. Tennant
Administrative Law Judge

Date: May 28, 1981